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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 RUBEN MARTINEZ,
15 Defendant.

Case No. 15-cr-2821-BAS-4

**ORDER GRANTING MOTION FOR
COMPASSIONATE RELEASE
(ECF No. 493)**

16
17 Defendant Ruben Martinez files a motion to reduce his sentence from thirty-three
18 months to time served (a little over one year) in light of the risk he faces from COVID-19.
19 (ECF No. 493 (“Motion”).) The Government opposes. (ECF No. 495 (“Opposition”).)
20 For the reasons stated below, the Court **GRANTS** the Motion.

21 **I. BACKGROUND**

22 Mr. Ruben Martinez ran a clinic in Calexico, California. (Government’s Sentencing
23 Memo (“Sent’g Memo”) at 3–5, ECF No. 410.) Mr. Martinez provided a chiropractor,
24 Steven Rigler, free rent, staff, utilities, and administration, and he solicited patients for
25 treatment at the clinic. (*Id.*; Presentence Report (“PSR”) ¶ 17, ECF No. 396.) In exchange,
26 Dr. Rigler allowed Mr. Martinez to sell off ancillary referral services, like MRIs (Magnetic
27 Resonance Imaging) and ECT (Extracorporeal Shockwave Therapy) to the highest bidder.
28 (Sent’g Memo at 3–5.) Ancillary service providers paid kickbacks and bribes to Mr.

1 Martinez for referring patients, and he was required to meet a quota of referrals. (*Id.*; PSR
2 ¶ 25.) The ancillary referral services were billed to the Workers' Compensation system.
3 (Sent'g Memo at 3–5.) Mr. Martinez falsely characterized the payments he received from
4 the ancillary service providers as “professional services.” (PSR ¶ 30.) Mr. Martinez pled
5 guilty to conspiracy to commit honest services mail fraud and health care fraud. (*Id.* ¶ 2.)

6 Mr. Martinez cooperated with the Government after pleading guilty and testified at
7 trial against co-defendants. At sentencing, the Court enhanced Mr. Martinez's guideline
8 range sixteen points because of the amount falsely billed to Workers' Compensation. (*See*
9 PSR ¶ 53.) Although Mr. Martinez agreed to this calculation as part of his plea agreement
10 and waived his right to appeal, the calculation was reversed on the appeal of a co-defendant.
11 *United States v. Grusd*, 787 Fed. App'x 922, 925 (9th Cir. 2019). In the *Grusd* appeal, the
12 Ninth Circuit held “[t]he district court erred by failing to consider whether to deduct at
13 least some amount from the total billed amount” for the fair market value of any services
14 actually provided. *Id.* Before this ruling, the Court sentenced Mr. Martinez to thirty-three
15 months in custody and three years of supervised release and ordered forfeiture of
16 \$29,987.28. (ECF Nos. 130, 427.)

17 Mr. Martinez was on pre-trial release for almost four years and had no violations.
18 (PSR ¶ 45.) The Court continued Mr. Martinez's self-surrender date multiple times, but
19 on August 14, 2019, he self-surrendered and began serving his sentence. (ECF No. 442.)
20 He also had twenty days pre-sentence credit, so he has served a little over a year of his
21 thirty-three month sentence.

22 Mr. Martinez, who will turn sixty-four next month, has suffered from Type II
23 diabetes for over fifteen years. (PSR ¶ 89.) He takes Metformin twice a day to treat this
24 condition. (*Id.*) Mr. Martinez is currently being housed at USP Lompoc, a minimum
25 security facility. The Bureau of Prisons (“BOP”) reports 170 inmates at this facility have
26 tested positive for COVID-19, with 167 of those recovered, and 24 staff have tested
27 positive with all recovered. *See* BOP, Covid-19 Cases, <http://www.bop.gov/coronavirus>
28 (last visited August 6, 2020). Two inmates at this facility have died. *Id.* At a nearby

1 facility, FCI Lompoc, 805 inmates have tested positive, with 802 reported recovered and
2 17 staff have tested positive with all but one recovered. *Id.* Two inmates at this facility
3 have also died. *Id.*

4 Mr. Martinez previously filed a Motion to Reduce his sentence, which the Court
5 denied for failure to exhaust administrative remedies. (ECF Nos. 474, 475.) On April 15,
6 2020, Mr. Martinez submitted a request to the Warden of the facility where he is being
7 housed to complete his sentence in home confinement. (Motion, Exh. B.) Mr. Martinez
8 made another request to the Warden on June 15, 2020, which was denied on July 10, 2020.
9 (Motion, Exh. E.) Mr. Martinez provides no evidence that he appealed this request.

10 **II. ANALYSIS**

11 **A. Exhaustion of Administrative Remedies**

12 A district court generally “may not modify a term of imprisonment once it has been
13 imposed.” 18 U.S.C. § 3582(c); *see also Dillon v. United States*, 560 U.S. 817, 825–26
14 (2010). A narrow exception, compassionate release, allows a court to reduce a sentence
15 for “extraordinary and compelling reasons.” 18 U.S.C. § 3582(c)(1)(A)(i).

16 However, a court may only consider a defendant’s motion for compassionate release
17 “after the defendant has fully exhausted all administrative rights to appeal a failure of the
18 [BOP] to bring a motion on the defendant’s behalf” or “the lapse of 30 days from the receipt
19 of such a request by the warden of the defendant’s facility, whichever is earlier.” *Id.* In
20 other words, Mr. Martinez must fully exhaust his administrative remedies from the Warden
21 of the facility where he is being housed before he turns to the Court for relief.

22 “Requiring inmates to exhaust their administrative remedies before seeking court
23 intervention serves several purposes. First, it protects administrative agency authority by
24 guaranteeing agencies the ‘opportunity to correct [their] own mistakes.’” *United States v.*
25 *Ng Lap Seng*, __ F. Supp. 3d __, 2020 WL 2301202, at *6 (S.D.N.Y. 2020) (quoting
26 *Woodford v. Ngo*, 548 U.S. 81, 89 (2006)). “Second, it promotes efficiency since claims
27 ‘generally can be resolved much more quickly and economically in proceedings before an
28 agency than in litigation in federal court.’” *Id.* This Court agrees with the vast majority of

1 courts in this circuit that have found such an exhaustion to be mandatory. *See, e.g., United*
 2 *States v. Stanard*, No. CR 16-320-RSM, 2020 WL 1987072, at *4 (W.D. Wash. Apr. 27,

3 2020); *United States v. Otero*, No. 17-cr-879-JAH, 2020 WL 1912216, at *3 (S.D. Cal.

4 Apr. 20, 2020); *United States v. Allison*, No. CR 16-5207-RBL, 2020 WL 1904047, at *2

5 (W.D. Wash. Apr. 17, 2020); *United States v. Fuller*, No. CR 17-0324 JLR, 2020 WL

6 1847751, at *2 (W.D. Wash. Apr. 13, 2020); *United States v. Aguila*, No. 2:16-0046-TLM,

7 2020 WL 1812159, at *1 (E.D. Cal. Apr. 9, 2020); *United States v. Carver*, No. 4:19-CR-

8 06044-SMJ, 2020 WL 1604968, at *1 (E.D. Wash. Apr. 1, 2020).

9 The Government may waive the exhaustion requirement, however, by asking the

10 court to consider the substantive merits of a defendant's motion. *Ng Lap Seng*, at *7. The

11 Government, in its Opposition, submits on the issue of exhaustion and addresses the

12 substantive issues. Therefore, the Court finds the Government has waived the exhaustion

13 requirement in this case.

14 **B. Extraordinary and Compelling Reasons**

15 If the exhaustion requirement is met, a court may modify or reduce the defendant's

16 term of imprisonment "after considering the factors set forth in [18 U.S.C. § 3553(a)]" if

17 the Court finds, as relevant here, that "extraordinary and compelling reasons warrant such

18 a reduction" and "such a reduction is consistent with applicable policy statements issued

19 by the Sentencing Commission." *Id.* As the movant, the defendant bears the burden to

20 establish that he or she is eligible for a sentence reduction. *United States v. Holden*, No.

21 3:13-cr-444-BR, 2020 WL 1673440, at *3 (D. Or. April 6, 2020).

22 The Government generally agrees that Mr. Martinez is facing "extraordinary and

23 compelling" circumstances such that the Court may reduce his sentence. (Opposition at

24 11–12.) The facility where he is being housed, despite many precautions, has suffered an

25 outbreak of COVID-19. Even with extraordinary precautions, it is difficult, if not

26 impossible, for a custodial facility to provide the conditions that protect the inmates from

27 the spread of the disease once it takes hold. Furthermore, Mr. Martinez, at sixty-three years

28 old and suffering from Type II diabetes, is at risk if he were to contract the disease. *See*

1 CDC, Coronavirus Disease 2019 (COVID-19), People with Certain Medical Conditions,
 2 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)
 3 [medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (last updated July 30, 2020) (advising that people with Type II
 4 diabetes “are at increased risk of severe illness from COVID-19”); CDC, Coronavirus
 5 Disease 2019 (COVID-19), Older Adults, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html)
 6 [ncov/need-extra-precautions/older-adults.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html) (last updated July 30, 2020) (advising that
 7 “people in their 60s or 70s are, in general, at higher risk for severe illness than [those
 8 younger]”). Therefore, the Court agrees Mr. Martinez has shown extraordinary and
 9 compelling reasons for his release.

10 **C. The Section 3553 Factors**

11 The Government’s primary argument is that the § 3553(a) factors, specifically the
 12 seriousness of the offense, general deterrence, and preventing unwarranted disparities,
 13 militate against the Court granting the Motion. (Opposition 13–15.) With respect to the
 14 seriousness of the offense, the Court adopts the statement it made initially at a co-
 15 defendant’s sentencing. This was a serious offense that undermines the Workers’
 16 Compensation system—a system designed to help those in need. However, Mr. Martinez’s
 17 role, compared to many of his co-defendants, was less serious. Furthermore, he cooperated
 18 and provided testimony against many of these co-defendants. Notably, Dr. Rigler, who
 19 was the closest co-conspirator other than Mr. Martinez’s son, was sentenced to only six
 20 months in custody (and the Government recommended a probationary sentence). (*See* Case
 21 No. 15-cr-02773-BAS, ECF Nos. 34, 39.)

22 Furthermore, at the time the Court sentenced Mr. Martinez, his age and diabetes
 23 were considerations that did not appear as significant as they do now. Indeed, the CDC
 24 reports that those over sixty with diabetes are likely to face serious consequences, even
 25 death, if they contract COVID-19. *See* CDC, Coronavirus Disease 2019 (COVID-19),
 26 People with Certain Medical Conditions, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)
 27 [ncov/need-extra-precautions/people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (last updated July 30,
 28 2020); CDC, Coronavirus Disease 2019 (COVID-19), Older Adults,

1 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>
2 (last updated July 30, 2020). The Court did not intend Mr. Martinez's thirty-three month
3 sentence to be a death sentence.

4 Finally, although the Government stresses that Mr. Martinez's ultimate sentence was
5 a downward departure from the Probation calculation and recommendation, the
6 Government now knows that this calculation was in error. In fact, if the Court had
7 attempted to deduct at least some amount from the total loss for the fair market value of
8 services actually provided, Mr. Martinez's guideline calculation would have been
9 considerably lower.

10 Ultimately, the Court finds the § 3553 factors support Mr. Martinez's request for
11 immediate release. Thus, the Court grants Mr. Martinez's Motion for Reduction in his
12 Sentence.

13 **III. CONCLUSION**

14 Because of "extraordinary and compelling reasons" the Court **GRANTS** Mr.
15 Martinez's Motion to Reduce his Sentence (ECF No. 493). The Court reduces Mr.
16 Martinez's sentence to a time served sentence.


17 Further, the Court declines to follow the Government's request to require Mr.
18 Martinez to remain on home confinement once released. The resources of the Probation
19 Department are being heavily taxed with recent releases because of the COVID-19 virus.
20 Home confinement is better reserved for defendants whom the Court believes may pose a
21 risk to the public if not closely monitored. Mr. Martinez was on pre-trial release for almost
22 four years without incident. The Government in its Opposition admits that the likelihood
23 that Mr. Martinez will pose a danger to the community is slight. (Opposition at 12–13.)
24 Therefore, the Court declines to add any additional conditions to Mr. Martinez's supervised
25 release. The term and conditions of supervised release remain the same.

26 Finally, this order is stayed for up to fourteen days, for the verification of
27 Defendant's residence and/or establishment of a release plan, to make appropriate travel
28 arrangements, and to ensure Defendant's safe release. Defendant shall be released as soon

1 as a residence is verified, a release plan is established, appropriate travel arrangements are
2 made, and it is safe for Defendant to travel. There shall be no delay in ensuring travel
3 arrangements are made. If more than fourteen days are needed to make appropriate travel
4 arrangements and ensure Defendant's safe release, the parties shall immediately notify the
5 Court and show cause why the stay should be extended.

6 **IT IS SO ORDERED.**

7
8 **DATED: August 6, 2020**


Hon. Cynthia Bashant
United States District Judge